

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
CC Docket No. 96-128

**REPLY COMMENTS OF METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY**

The Metropolitan Washington Airports Authority ("Airports Authority") submits these reply comments to address certain concerns raised by comments of others in this proceeding, in which the Commission seeks to implement the pay telephone provisions of the Telecommunications Act of 1996 (the "Act"). Pub. L. No. 104-104, 110 Stat. 56 (1996).

The Airports Authority is a public body (created by interstate compact) charged with the operation of Washington National and Dulles International Airports for public purposes. These airports serve the twelfth largest air passenger market in the United States. Nearly 28 million passengers pass through our airports annually. One of the services expected by travelers is readily available, efficient, reliable telecommunications and payphone service in particular. The Airports Authority firmly endorses the principle espoused by the Airports Council International that the location provider (either directly or acting through its agents) must have the "ultimate decision-making authority" over all

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payphone equipment and services provided at its facilities. This is necessary to respond to the particular circumstances of each location provider and to developments in technology and service in an orderly way, as we show in these reply comments:

A. The Core Purpose of the Statute is to Preserve and Enhance the Location Provider's Choice of Equipment and Service Providers.

The fundamental purpose of Section 276, consistent with the overall objectives of the Act, is to promote competition in payphone equipment and service by removing restrictions on the marketplace and enlarging the customer's choice. In the payphone context, Congress explicitly made the location provider the customer by choosing to grandfather existing contracts between location providers and payphone service providers ("PSPs") or interLATA or intraLATA carriers. 47 U.S.C. §276(b)(3). Further, as the Commission points out, the legislative history of the section states that "the location provider has the ultimate decision-making authority in determining interLATA services." Implementation of the Pay Telephone Reclassification and Compensation Provisions of the 1996 Telecommunications Act, Notice of Proposed Rulemaking ("NPRM"), ___ FCC Rcd ___, ¶168 (June 6, 1996), citing Jt. Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d. Sess. at 44 (1996) ("Conference Report").

The Airports Authority maintains that this "ultimate decision-making authority" goes beyond selection of the interLATA services and interLATA

service provider it chooses to offer at its facilities. The entire structure of the Act and its core purposes compel the conclusion that location providers' "choice" (Conference Report at 44) extends to the selection of services and service providers for all interstate and intrastate services made available through payphones at a particular location. The Commission has implicitly recognized that the location providers' choice includes local exchange and intrastate services. Its tentative conclusion (broadly supported) to require local exchange carriers to provide dialing parity to all payphone locations, would enable the location provider, as the customer of record, to choose among competing providers of these services. The Commission's tentative requirement that all payphones be classified as customer premises equipment, NPRM at ¶42, confirms that the location provider should have ultimate control of the location, installation, and removal of payphones on its premises.

The application of these principles is of particular importance to the Airports Authority because we have already made commitments consistent with them. At Dulles, we have an arrangement with the local exchange carrier ("LEC") to provide dialtone, and a separate arrangement with an interexchange carrier ("IXC") to handle interLATA and interstate traffic. Moreover, we also have entered a separate contract with a BOC to supply and maintain payphone equipment. The situation at National is somewhat different. There the payphones are predominantly (although not exclusively) provided by the incumbent LEC. That arrangement was, however, a matter of choice by the Airports Authority. It can be evaluated at the expiration of the contract term. The

Airports Authority needs to retain decision-making authority with respect to all elements of payphone service at its airports not just for the reasons stated, but also because of massive renovation and expansion projects being carried out at both of our airports. These projects will require relocation, and possibly some change in the number of payphones that will be maintained at each of our facilities.

B. States Should be Required to Follow the Federal Model in Establishing Compensation for Intrastate Dial-Around Traffic.

The Airports Authority accepts the Commission's tentative conclusion that the power to regulate local exchange and intrastate payphone rates should remain with state regulatory bodies.¹ The Airports Authority asks the Commission to make explicit what is already implicit in the statute: state regulators may not circumvent the Commission's model for compensating PSPs and location providers; and the states must follow that model in matters over which they have jurisdiction. First, the states should not be permitted to prohibit presubscription arrangements for intrastate traffic; nor should they be permitted to prescribe the maximum compensation payable under such arrangements. In addition, the states should be required to follow whatever formula the Commission ultimately adopts for determining "fair" compensation for dial-around

¹ We recognize that this may, in some circumstances, restrict the compensation received by location providers, from presubscription arrangements or indirectly from intrastate dial-around traffic. However, the introduction of competition in intrastate telecommunications, as well as the unbundling of BOC-provided payphones, will eliminate below-cost pricing of these services, and permit fair compensation to location providers without burdening end users.

traffic.² Finally, and most importantly, the Commission should prohibit the states from implementing a set-use fee as the mechanism for compensating PSPs and location providers for dial-around intrastate calls

These issues are of particular concern to the Airports Authority. Dulles is close to a LATA boundary (to the west of the airport), and at the same time, 26 miles from the city of Washington (to the east) . As a result, a significant percentage of calls made from payphones at Dulles are intrastate, interLATA calls and others, although intraLATA carry a uniform rate under wide area service type arrangements. Passengers are not familiar with LATA boundaries and would be endlessly confused by different dialing requirements for local calls (including the extensive Washington metropolitan calling area which covers D.C. and parts of Virginia and Maryland), for intrastate, interLATA calls (which include destinations within five miles of Dulles) and for interstate calls. Although regular users of the airports might learn the intricacies of such a scheme, a significant percentage of our passengers are visitors. The Airports Authority must be able to simplify dialing requirements through contractual presubscription arrangements and state regulators should not be able to interfere with our choices of presubscribed carriers.

² The Commission has suggested that it intends to use PPO costs as the proxy for determining dial-around compensation. Several parties, most especially the RBOC Payphone Coalition, propose that the Commission set a transitional default rate, based upon presubscribed compensation rates. We take no position as to which of these approaches the Commission ultimately should select. It is clear, however, that whichever standard the Commission adopts, it should require that all states apply the same standard in their dial-around compensation determinations. Otherwise, there is a very real danger that location providers will be under compensated for intrastate dial-around traffic and the relationship between intra- and interstate rates may be distorted.

As to compensation for dial-around calls, a uniform set-use fee for intrastate dial-around calls based on statewide (or area wide) averages is likely to overcharge some airport callers because of the significant differences in the pattern of calls. A variable fee (even if possible) would cause significant consumer confusion. Moreover, a set use fee, particularly if coin paid, would seriously inconvenience members of the traveling public that use the Airports Authority's payphones. It would increase time spent at payphones, and would increase the number of payphones that must be installed.

Plainly, the Commission has the power to preempt state regulation that is inconsistent with its regulatory scheme and the goals established by Section 276 of the Act. See 47 U.S.C. §276(c) (inconsistent state regulations preempted). See also North Carolina Utilities Commission v. FCC, 434 U.S. 874 (1977). Although we believe that the Commission should refrain from preempting the states in the traditional exercise of rate regulation, it should require all states to follow the federal model in determining the compensation paid to PSPs and location providers.

C. Location Providers Should Determine the Extent to Which Existing Arrangements are Grandfathered.


Two elements in the implementation of Section 276(b)(3) of the Act -- which provides that the new requirements shall not affect "any existing contract between location providers" and equipment or service providers -- bear brief comment. First, the commenting parties are in substantial disagreement as to

whether a location provider's letter of authorization ("LOA"), which authorizes the IXC or some third party to serve payphone stations, is grandfathered by the Act. The Airports Authority respectfully submits that this debate is both unnecessary and ultimately sterile. If the location provider has decision-making authority, then it is not necessary for the Commission to decide whether existing LOAs are binding. If according to the law of the state, a particular LOA is a binding contract, then the location provider would be bound by its terms. If not, it would not. However, the fundamental principle of preserving and enhancing location providers' choice compels the conclusion that the Commission ought not to decide, whether LOAs are grandfathered.

A similar resolution should be reached with respect to the question of the establishment of demarcation points for payphones. The Commission has suggested that the unbundling of BOC-provided phones will require the establishment of a demarcation point and has reached the tentative conclusion that the demarcation point for payphones should be governed by the Commission's existing demarcation rules. NPRM at ¶47. There are several difficulties with this proposal. In the first instance, the demarcation point rules are under going re-examination and it is far from clear how those rules will evolve or what effect they may have on the maintenance of a competitive marketplace for payphone equipment. Secondly, the application of those rules to campus and other multi-tenant, multi-premise locations remains somewhat unclear. As a consequence, the Airports Authority -- and we suspect other airports as well -- have entered into arrangements with their local exchange

carrier establishing demarcation points, or a single demarcation point, for all telecommunications equipment and services (including payphones) at their facilities. In some cases, these arrangements are embodied in written contracts; in others, they exist by informal understandings between the LEC and the location provider. There is no valid reason to disturb or re-open such arrangements. Thus, to the extent that a particular location provider has either expressly or implicitly established a demarcation point for payphones on its premises, those arrangements should be deemed grandfathered and unaffected by the Commission's new rules.

Respectfully submitted,



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